

EL



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,938	02/22/2002	Stacey A. Infantino	HANN-0002	6412

23550 7590 03/18/2004

HOFFMAN WARNICK & D'ALESSANDRO, LLC
3 E-COMM SQUARE
ALBANY, NY 12207

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 03/18/2004

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/081,938

Applicant(s)

INFANTINO ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 18 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

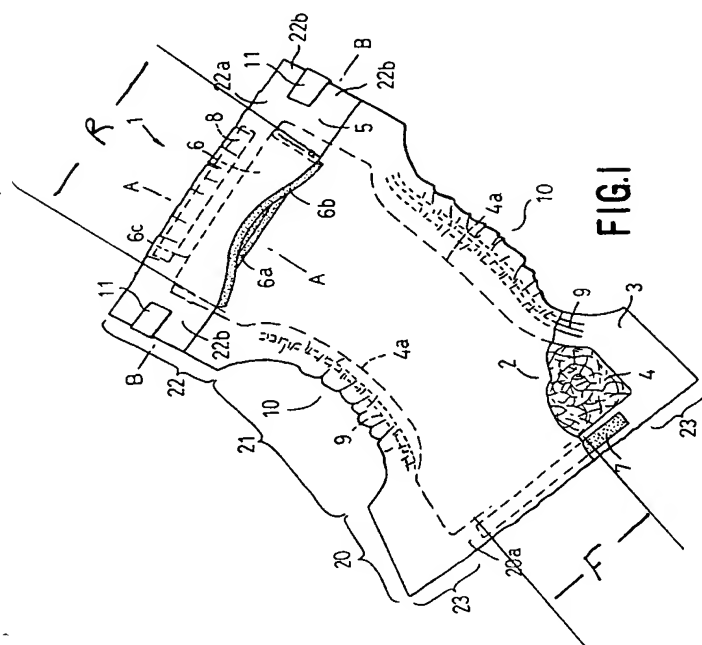
1. Applicant's arguments filed 1/7/04 have been fully considered but they are not persuasive. Applicant argues Kitaoka does not disclose the invention as claimed in that Kitaoka does not disclose the bumper of the claimed invention extends along an entire edge of at least one of the front portion and the rear portion. Applicant has not specifically defined the front or rear portion with regard to the dimensions of the incontinence article, or relative to other elements in the structure. Thus, the examiner interprets the front and rear portion to be any portion of the front and rear of the incontinence article. The examiner has noted the front portion as area **F** and the back portion as area **R**, shown in the figure below. As shown, the bumper **6** extends along an entire edge of at least one of the front portion and rear portion.

U.S. Patent

Jul. 30, 2002

Sheet 1 of 4

US 6,425,889 B1



Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3761

3. Claims 1-6, 8-10, 12-17, 19-23, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Kitaoka et al. USPN 6425889.

As to claim 1, Kitaoka discloses an incontinence article, comprising: a front portion **F**; a rear portion **R** joined to the front portion; and a bumper **6** extending along an entire edge of at least one of the front portion and the rear portion. The foamed member **6** of Kitaoka is considered a bumper in that Kitaoka uses the foamed member to improve the cushioning property of the diaper and contribute to the comfort of the user (col. 5, lines 13-21).

As to claims 2 and 4, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4). The liquid-resistant sheet **5** of Kitaoka is considered a guard in that Kitaoka discloses the sheet and bumper form a pocket, which is used to prevent body wastes from leaking outward from front and rear waist regions of a diaper (col. 1, lines 34-38)

As to claim 3, Kitaoka discloses a back guard **5** extending from the rear portion, wherein the bumper is attached along a top edge of the back guard (Figures 2 and 5).

As to claim 5, see Figure 1.

As to claim 6, see Figure 4.

As to claim 8, Kitaoka discloses an incontinence article, comprising: a front portion **F** having a front guard extending therefrom; a rear portion **R** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear portion; and a bumper **6** extending along an entire edge of at least one of the front guard **5** and the back guard **5** (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claims 9 and 13, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 10, see Figures 2 and 5.

As to claim 12, see Figure 1.

As to claim 14, Kitaoka discloses an incontinence article, comprising: a front portion **F**; a rear portion **R** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear portion; and a bumper **6** extending along an entire edge of at least one of the front portion and the back guard.

As to claim 15, see Figure 1.

As to claim 16, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 17, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 19, see Figure 4.

As to claim 20, Kitaoka discloses an incontinence article, comprising: a front portion **F** having a front guard **5** extending therefrom; a rear portion **R**, a crotch portion **21** between the front portion and the rear portion; and a bumper **6** extending along an entire edge of at least one of the front guard **5** and the rear portion (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claim 21, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 22, see Figure 1.

As to claim 23, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 25, see Figure 1.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 11, 18, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitaoka. Kitaoka discloses the present invention substantially as claimed. However, Kitaoka does not disclose the bumper is a roll. It would have been an obvious matter of design choice to provide the article of Kitaoka with a roll-shaped bumper, since such a modification would have involved a mere change in the shape of the component. A change in shape is generally

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

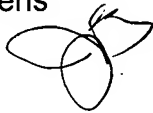
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
Art Unit 3761



March 15, 2004



JOHN B. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700